

§ 40.24

| Product | Tax rate per thousand for removals during the following periods: | |
|----------------------------------|---|-------------------------|
| | 2002 to March 31, 2009 | April 1, 2009 and after |
| Small cigarettes | \$19.50 | \$50.33 |
| Large cigarettes up to 6½" long. | \$40.95 | \$105.69 |
| Large cigarettes over 6½" long. | Taxed at the rate for small cigarettes, counting each 2¾" or fraction thereof of the length of each as one cigarette. | |

[T.D. TTB-75, 74 FR 14482, Mar. 31, 2009]

§ 40.24 Classification of cigarettes.

For tax purposes, small cigarettes are designated Class A and large cigarettes are designated Class B.

(72 Stat. 1414; 26 U.S.C. 5701)

§ 40.25 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

| Product | Tax rate per pound* for removals during the following periods: | |
|-----------------------|--|-------------------------|
| | 2002 to March 31, 2009 | April 1, 2009 and after |
| Snuff | \$ 0.585 | \$ 1.51 |
| Chewing tobacco | \$ 0.195 | \$ 0.5033 |

* Prorate tax for fractions of a pound.

[T.D. TTB-75, 74 FR 14482, Mar. 31, 2009]

§ 40.25a Pipe tobacco and roll-your-own tobacco tax rates and classification.

(a) *Tax rates.* Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

| Product | Tax rate per pound* for removals during the following periods: | |
|----------------------------|--|-------------------------|
| | 2002 to March 31, 2009 | April 1, 2009 and after |
| Pipe tobacco | \$ 1.0969 | \$ 2.8311 |
| Roll-your-own tobacco | \$ 1.0969 | \$ 24.78 |

* Prorate tax for fractions of a pound.

(b) *Classification.* (1) Pipe tobacco and roll-your-own tobacco, before removal subject to tax, must be put up in packages that conform to the requirements of §§ 40.211 and 40.212, and of § 40.216a or § 40.216b as appropriate.

(2) Any tobacco that has been processed and that is removed in a package, as that term is defined in § 40.11, that does not bear the notice for smokeless

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tobacco prescribed in § 40.216 or the notice for pipe tobacco prescribed in § 40.216a is deemed to be roll-your-own tobacco and subject to tax at the rate applicable to roll-your-own tobacco.

(3) Subject to paragraph (b)(4) of this section, any tobacco that has been processed and that is removed in a package, as that term is defined in § 40.11, is deemed to be roll-your-own tobacco and subject to tax at the rate applicable to roll-your-own tobacco, even though the package bears the notice required for pipe tobacco under § 40.216a, if:

(i) The package does not bear the declaration "pipe tobacco" in direct conjunction with, parallel to, and in substantially the same conspicuousness of type and background as the brand name each time the brand name appears on the package; or

(ii) The package or accompanying materials bear any representation that would suggest a use other than as pipe tobacco. (26 U.S.C. 5702 and 5723)

(4) During the period from June 22, 2009, through March 23, 2010, manufacturers may continue to remove products as pipe tobacco in packages that do not bear the declaration "pipe tobacco" in the manner prescribed in paragraph (b)(3)(i) of this section.

[T.D. TTB-75, 74 FR 14482, Mar. 31, 2009, as amended by T.D. TTB-78, 74 FR 29408, June 22, 2009; T.D. TTB-81, 74 FR 48653, Sept. 24, 2009]

EFFECTIVE DATE NOTES: 1. By T.D. TTB-78, 74 FR 29408, June 22, 2009, § 40.25a was amended by revising the section heading, designating the existing text as paragraph (a), adding a heading to newly designated paragraph (a), and adding a new paragraph (b), effective June 22, 2009 through June 22, 2012.

2. By T.D. TTB-81, 74 FR 48653, Sept. 24, 2009, § 40.25a(b)(3) was amended by removing the words "Any tobacco" and adding, in their place, the words "Subject to paragraph (b)(4) of this section, any tobacco", and a new paragraph (b)(4) was added, effective Sept. 24, 2009 through June 22, 2012.

§ 40.26 Persons liable for tax.

The manufacturer of tobacco products shall be liable for the taxes imposed on tobacco products by 26 U.S.C. 5701: *Provided*, That when tobacco products are transferred in bond pursuant to 26 U.S.C. 5704, to the bonded premises of another such manufacturer or

an export warehouse proprietor, the transferee shall become liable for the tax upon receipt by him of such products and the transferor shall thereupon be relieved of his liability for the tax. When tobacco products are released in bond from customs custody for transfer to the bonded premises of a manufacturer of tobacco products, the transferee shall become liable for the tax on such products upon release from customs custody. Any person who possesses tobacco products in violation of 26 U.S.C. 5751(a)(1) or (2), shall be liable for a tax equal to the tax on such products.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1415, as amended, 1424, as amended (26 U.S.C. 5703, 5751))

[T.D. 6871, 31 FR 32, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979; T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

§ 40.27 Assessment.

Whenever any person required by law to pay tax on tobacco products fails to pay such tax, the tax shall be ascertained and assessed against such person, subject to the limitations prescribed in 26 U.S.C. 6501. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after notice has been afforded such person to show cause against assessment. The person will be allowed 45 days from the date of such notice to show cause, in writing, against such assessment.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1415, as amended (26 U.S.C. 5703))

[T.D. 6871, 31 FR 32, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979; T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

Subpart Ca—Special (Occupational) Taxes

SOURCE: T.D. ATF-271, 53 FR 17560, May 17, 1988, unless otherwise noted.

§ 40.31 Liability for special tax.

(a) *Manufacturer of tobacco products.* Every manufacturer of tobacco products shall pay a special (occupational) tax at a rate specified by § 40.32 of the part. The tax shall be paid on or before the date of commencing the business of manufacturing tobacco products, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) [Reserved]

(c) *Each place of business taxable.* A manufacturer of tobacco products incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(d) *Payment of tax.* Special tax must be paid by return. The prescribed return is TTB Form 5630.5t, Special Tax Registration and Return—Tobacco. Special tax returns, with payment of tax, must be filed with TTB in accordance with the instructions on the form and the requirements of subpart D of part 46 of this chapter.

(26 U.S.C. 5731, 5733)

[T.D. ATF-271, 53 FR 17560, May 17, 1988, as amended by T.D. TTB-79, 74 FR 37419, July 28, 2009]

§ 40.32 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(1) imposes a special tax of \$1,000 per year on every manufacturer of tobacco products.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of \$500 per year with respect to any manufacturer of tobacco products whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which